

**Town of Milford
Zoning Board of Adjustment
September 1, 2016
Case #2016-21
Justin DeMontigny
Special Exception**

Present: Kevin Johnson, Chairman
Michael Thornton, Vice Chair
Joan Dargie
Jason Plourde
Rob Costantino

Excused: Len Harten, Alternate
Katherine Bauer – Board of Selectmen’s representative

Secretary: Peg Ouellette

The applicant, Justin DeMontigny, for property located at 61 Tonella Road, Milford, NH, Tax Map 43, Lot 25, in Residential B district, is seeking a Special Exception per the Milford Zoning Ordinances Article V, Section 5.03.2.A.11 to allow a reduced front yard setback for an existing historic stone structure in the open space conservation area of the proposed development called Milford Quarry Townhomes.

MINUTES APPROVED ON 11/3/16

K. Johnson, Chair, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board and informed all of the procedures of the Board. K. Johnson read the notice of hearing into the record.

Doug MacGuire, P.E. of The Dubay Group, Inc., represented the applicant. He stated this was two properties at the end of Tonella Rd. One of approximately 2 acres, and one larger in back with no legal frontage. Front lot only has extent of the right of way – 40 ft – as frontage for that lot. Proposal was for additional townhomes and update and bring certain area into conformance. In doing that, proposing to officially extend right of way of Tonella Rd. Tonella currently extends into the front property. If you drove down there you would probably that there was frontage on that property and the back one because the road goes all the way to the entrance of the back property with a gravel turnaround on the property. Maintained by the town but not technically right of way. They want to extend right of way in order to develop townhomes. Existing stone structure approximately 5 ft off private portion of Tonella Rd.

Proposed re-aligning road to pull it away from that structure to make separation more conforming but still doesn't conform to required 30 ft. setback required for town right of way. Showed a blowup showing existing 8 ½ ft and 3 ½ ft and proposed 14 ½ ft. and 15 ½ ft from roadway. Better situation. Advantages to keeping the structure. It was made from material from the granite quarry in town. It was special. The Treasury Building in DC has stone from those quarries. They were asking for reduced front setback.

M. Thornton asked what they would do with the building.

D. MacGuire said incorporate it in the open space. Maybe picnic tables. It was flat area and would be good recreation area. Existing stone structure would complement that and be an additional feature.

J. Dargie asked if building had been looked at for structural safety; because it wasn't really a building. It was more like a Stonehenge or something. Didn't look safe.

J. DeMontigny said it had been re-mortared within the last ten years. It had not been evaluated but it was shored up.

D. MacGuire said not proposing to add any roof structure that would be additional weight, etc.

J. Dargie asked about what sort of approval must be met to make it a road, since it was a private road.

D. MacGuire said they would be re-aligning the road slightly to provide more separation from the structure. Would be repaving to town standards. Will have to be approved by Planning Bd. They went conceptually before Planning Bd last week and there was no open opposition. It was only conceptual, not official. But there was no opposition from Planning Bd.

J. Dargie asked if the proposed townhomes would be 55 and over.

D. MacGuire said market townhomes in the Res. B District which permitted multi-family houses. Actually permits a fair amount of multi-family housing. For scale, he did calculations and it could actually support 70 units.

R. Costantino asked him to explain his comment about frontage.

D. MacGuire said he misspoke. They were not looking for relief on frontage. They were seeking relief on setback of the structure. Where they are placing right of way it will be nonconforming structure.

J. Dargie asked if anyone from Historical Commission suggested that the building as a structure.

D. MacGuire said nothing official. There were discussions about having someone from Historical Association evaluate it. Planning Bd seemed to appreciate its significance. Maybe not by an official commission but it was very old and built with original quarry stone that made this area relatively famous.

R. Costantino didn't understand what Special Exception was for. They were proposing making something better.

D. MacGuire said he had same question. Met with Office of Community Development. Making a nonconforming situation better but adding a right of way.

K. Johnson said that was his point of confusion also. What they were proposing was extending Tonella Rd onto this property and that road and right of way would be deeded to the town.

D. MacGuire & R. Lunn said that was correct.

K. Johnson said then rather than being a structure off a private driveway it becomes a nonconforming structure on a public road.

R. Lunn said, which would not meet setback requirements.

J. Dargie said for a public road.

R. Lunn said correct.

J. Dargie questioned why they were there; why this was being done first. She knew there were some wetland issues.

D. MacGuire said the reason they were there first was because this directly set the location of roadway. If the ZBA not inclined to grant the special exception, only option to do development as they would like to do would be to remove the stone structure. If they were going to remove it that may modify how it is laid out. This was a real survey, not conceptual. Need to get understanding from Bd as to whether they were amenable to having structure remain.

J. Dargie said everything was conceptual at present. Would not want to approve on conceptual basis when that might be construed that they approved the entire thing. Also, no has said that stone building needs to stay there. She would feel better if Historic said it was worth keeping.

J. Plourde said it really came down to the stone structure.

K. Johnson said he saw it as a sort of chicken or the egg; which comes first, the road or building? If the town wants to build a road and the structures are already there that was the town's responsibility.

J. Dargie said the town wasn't putting the road in.

K. Johnson, J. Dargie & J. Plourde agreed it was being accepted by the town.

R. Lunn said this was a small piece of right of way in a subdivision. Any large right of way in a subdivision, if there is existing building proposed to be adjacent to the proposed road it was developer's responsibility to get permits. And if the condition of the road depended on whether existing building needs to be taken down they need to meet setback requirements. That was why they were there first.

J. Dargie said they could put the road in and then come back.

D. MacGuire said they would not do that. They would not put in 300-plus ft. of road at considerable expense hoping that the Bd. would allow the structure to stay and their not having to relocate the road.

J. Dargie said question was of tearing it down or leaving it up.

D. MacGuire said if they tore it down they didn't need to move the road. In discussing the road, staff said it would be nice to slightly modify the approach. If not doing that, will leave it the way it is. That road was put in to town spec originally. Not sure why it was not deeded to the town.

M. Thornton said he'd hate to see structure torn down just because they didn't know if it was chicken or egg argument.

J. Dargie suggested waiting, and finding out. And then come back.

K. Johnson wasn't sure there was enough information. Trying to reconcile GIS and their map. Relocating house across the fork of the street?

D. MacGuire said yes. It was presented to the Planning Bd last week. Applicant looking to move forward one way or the other. Were inclined to keep the structure. Didn't see negative in that. Need to get that determination from Planning Bd first. If Bd not inclined to allow it to stand, they would raise it and move forward with application. He felt this was all the information they could provide. You have an existing stub of road without a right of way. If the Bd. is not interested in that structure staying they would remove it and leave the rest the way it was and save money. They were more leaning that way. Wanted to present it to Bd. so it wasn't their (applicant's) decision to remove a building that may have significance. He told of a Boy Scout troop who were there taking pictures of it because they had gone to DC and heard about the history and came to take pictures. It did seem to have some significance in the community. That was why they were there. If Bd. didn't feel strongly about it, they would remove it.

J. Plourde wanted more information about whether it was structurally sound. Was it falling apart, etc.

K. Johnson suggested a site visit.

R. Costantino said it was huge concrete blocks stacked on one another. Not really a building.

J. Plourde said it was going to be too close to proposed road. That was why they were there. What will it look like? Will it be safe? Will it fall?

D. MacGuire said no. It had been there for decades and decades.

R. Costantino said it was a big fieldstone foundation.

J. Plourde said if Tim Herlihy (building inspector) said it was okay, that would address some of his concerns.

R. Costantino said if a car ran into it, there would be no damage to it; more damage to the car.

D. MacGuire said it was gated. Only potential turnaround was Tonella Rd. They have to go in a turn around. They were making it a better situation. They would have come prepared with more photos. Thought it was no-brainer from that perspective. It is existing structure that has been there for decades.

J. Dargie said potential 12 homes with vehicles. That was an additional consideration because you were putting traffic in front of that building that really wasn't there before. When you get to end of Tonella it looks like a private road.

D. MacGuire said not until the driveway of the existing house.

J. Dargie said she goes by there every day, never have driven down it in 30 years because it looked like a private way.

M. Thornton said he had been there twice in last week. Didn't see sign for Tonella until past the stop sign and getting past Ledgewood.

D. MacGuire said if Bd not inclined to approve tonight, what would they be asking for specifically. The applicant will not be doing any engineering study of the structure. Not worth the cost. They will knock it down first, because of the expense. They were already a little upside down on realigning the road.

This was a kind of let's see what they think. If the Bd. isn't inclined they will knock it down.

J. DeMontigny said he didn't want to take it down. It was Granite Town in Granite State. It was an added cost. Would be unfortunate to have to take it down, but it would be direction they would have to go.

J. Plourde said not asking for engineering study. Just wanted to be sure they have enough information to make right decision. Bd. had letter from Conservation Commission with questions they had. If they talk to Building Inspector and he signs off, he was good with it, as one Bd. member. Just have Tim go out and take a look at it.

D. MacGuire said that seemed reasonable.

M. Thornton said re moving road further away he looked at that as a method of improving a situation. Looking at that with intention to look at it favorably.

J. Plourde asked if they would be working with DPW re realigning the road.

D. MacGuire said it would be full site review. Also drainage, etc.

J. Plourde suggested making sure to meet with Rick Riendeau at DPW.

D. MacGuire agreed to.

K. Johnson said on drawing they had new lot 43-25A but he didn't see delineation of that in existing 43-25. What part were they breaking off. Or what were they including from some other lot to create new lot.

D. MacGuire said there was one existing lot with private home on it. Looking to extend right of way, which effectively bisects it. Creates two lots. Line coming around and up created new 43-25A with remaining 43-25 on the other portion of the right of way.

J. Dargie asked what new Lot 25A would be.

D. MacGuire said it would be a nonbuildable open space lot for benefit of the condos they were proposing. Will be deed restricted and a portion of the recreation space associated with the development.

K. Johnson not seeing relationship between Tax Map Lot 43-25 and proposed lot line. According to tax map, there is a right angle line from one property to the angular line on the other. Applicant has property line that came up approximately half of property then takes a jog and follows down o the line of Tonella Rd. Missing where rest of that property would lie.

D. MacGuire pointed out existing lot line. In the development of this parcel would be dong lot line adjustment. Both under common ownership.

K. Johnson said 43-25 and 24.

D. MacGuire said correct. Would be lot line adjustment between those two and because of addition of right of way there would be a third lot created. There would be a subdivision as part of this development and included in that would be doing..

K. Johnson said it would be a re-division and a subdivision.

D. MacGuire said he guessed it would be a subdivision. Technically. Forgetting the condos, they would be providing a subdivision to provide a right of way into the existing parcel creating three lots. From that they would be developing one of the lots, utilizing one of the deed-restricted open space lots and third would remain unchanged in its current use. Seemed a little unorthodox, but he felt it was making it more conforming. Lot 24 had no frontage and now would have legal frontage. Lot 25 had 40 ft., which required 225 ft; now they had full 225. Bringing both into fully complying with zoning ordinance beside this structure setback.

J. Dargie asked how Lot 4 could end up with no frontage.

D. MacGuire said lots were extremely old and part of quarry before modern zoning. Just the way it was broken up. Both currently nonconforming and in existence for a long time. Need to bring it up to conform. Planning Bd suggested they may not need to even look at fully conforming the large lot because development was up front, but they felt why not bring it up to current zoning requirements.

R. Costantino didn't know if any historical value of structure.

D. MacGuire said there was no official review, per se. Structure may be a strong word. Would fall technically in definition.

K. Johnson said more of a structure than a building.

D. MacGuire said it was like a Mayan ruin. M. Thornton said he called it an enclosure.

D. MacGuire said it was unique, interesting. Because it was so minimal they thought it would work into existing space. Put tables there and people would enjoy sitting in it.

J. Dargie asked the definition of structure, for setback.

K. Johnson said all buildings were structures, but not all structures were buildings.

J. Dargie suggested something from Historical.

J. DeMontigny said the granite was pulled from Milford. The Granite House in Milford, the Engine House for County Stores. There were other houses in the area, quarry properties that are still existing up there. Not sure of historic value of that structure in terms of what it was used for. Knew that granite pulled from that quarry was used for properties all across Milford; they shipped that granite to DC, to Boston. It was used everywhere. Would like to leave it because they knew that granite was used all over town and in historical buildings in cities. While that structure may not be historically significant, the granite used was.

J. Plourde said Ledgewood road had sidewalks on both sides but terminated at Tonella. If they considered having sidewalks, wanted to make sure not closer to that building.

D. MacGuire said they were on the other side.

J. Plourde asked if no sidewalks on condo side.

D. MacGuire and none proposed at this point. With Planning Bd process, if sidewalks required they would put on existing side so not encroaching.

K. Johnson said re low level of traffic, if Tonella expanded to give 43-24 required frontage, concerned with possible future further development adding traffic.

D. MacGuire said it was valid consideration. No plans for that now. If and when that was developed would have to go through full Planning Bd. review as far as traffic safety. If they were going to put 70 units in there, the Planning Bd said if they were putting 70 units in they would be looking for second point of access. They would not support that. They were aware of traffic issues at end of Tonella. That would be reviewed at that point. No significant traffic now. It was on end of Tonella. Personally didn't see any danger. not at end of turnaround and opens to opportunity to veer off road into it. You would be coming to a stopping condition at end. They were increasing the separation. Right now it feels like it is right on edge of the pavement. Tripling that separation will make big difference from drivers' perspective.

J. DeMontigny said last week doing a traffic study was brought up but it was determined that would not be necessary.

D. MacGuire said that was something they wanted to touch on before coming back with full application. With full disclosure with the Planning Bd, he probably should have requested an informal straw poll re the existing structure. But it was discussed. General consensus seemed they were in favor of the structure staying.

M. Thornton said, centering it down to whether they want it to stay or leave, he personally didn't see gain to having it removed. Better to have a speeding car find the structure than find a pedestrian.

D. MacGuire mentioned trees and telephone poles. He felt the intent of setback wasn't as much safety as having a building towering over the roadway; doesn't leave much for access & egress. This structure won't be inhabited. It will be for looks.

J. Plourde mentioned it was also for sight lines, for drivers. He asked about other stone building further to the right.

D. MacGuire said that was gravel turnaround. It was expanded.

J. DeMontigny said it had been there forever.

J. Dargie said usually they don't like to use turnarounds. They had just gone to the Planning Bd. with conceptual.

D. MacGuire said intent that this plan was real; intent was having feedback. Turnaround was discussed. No issue. Seen as improvement to what they had. It was designed to fire standards. It met fire truck turnaround template. Didn't see a potential issue.

J. Plourde said will probably get more into that when talking with DPW. He asked about curbing.

D. MacGuire said no. Will do drainage side. Basically same width of road. Shifting it slightly. Already there already. Not increasing drainage runoff other than proposed townhouses. Will handle that with practices on their site. Not curbed now and will keep it that way.

J. Dargie asked if house on property was getting relocated to the back location.

D. MacGuire said it was fully acceptable house built in about 1950 and all updated up to code. Goal will be to not get rid of it. Currently being rented.

J. Dargie said it was part of the lot that will be split off. Didn't know how it worked with frontage and making another house.

D. MacGuire said it was discussed with Planning Bd. and would be handled at that level. There were two single family homes on property operating without any frontage. Goal would be to upgrade it and bring it into the condo association. Will be separate development and will be condo and those parcels would all be legal. The parcel itself would all be common land with full frontage, which it doesn't have now. Those three units would be units on that development. That is how they will satisfy the frontage requirements, etc.

K. Johnson asked Bd. if they required additional information from Community Development. Board members did, and additional feedback from Building Inspector and Historic Commission.

M. Thornton said if there was no sense in trying to keep it, there was no sense in keeping it. Unless it was going to fall down, which he didn't see happening.

K. Johnson said they could continue to Oct. 6 meeting and request additional information it made sense to continue this case to Oct 6. Once they continue, they could discuss what they want to request from OCD, Planning Bd, the building inspector, DPW, etc.

D. MacGuire asked if they could get that prior to next meeting so they could assess the next hearing.

K. Johnson said absolutely.

J. Plourde said they would require that.

M. Johnson was getting feeling from the Bd they were not opposed but felt not enough information at this time to make an informed decision. Would like to get that information. If it turned out the preservation of that structure is safe. Going down criteria for special exception. Is it appropriate site? If they made determination it's appropriate for the location based on location of the road and it did create a hazard to vehicles and pedestrians. His concern was that it would be focal point for activities with people crossing that road; but potential for further development. Future owner could decide to put in 70 units. Bd. needs to consider that. Applicant may have good intentions, but next developer might decide to build absolute maximum units that could create hazard. Bd needs to consider those things. Need more information.

K. Johnson asked for motion to continue presentation of case to October 6.

J. Dargie asked about public comment first.

K. Johnson said they were not at the point yet. Don't want to have public comment yet because something the Bd may go over may cover their comment.

J. Dargie made motion.

R. Costantino seconded.

All in favor.

K. Johnson informed applicant that presentation, public comment and deliberation of case were all continued to Oct. 6. One piece of information they want is to have structure looked at by someone in

town to give opinion of safety as continued recreational structure – not a building – in its present location in consideration of the proposed location of the road.

R. Costantino mentioned knowing if there was historical value, if they wanted to move it.

K. Johnson asked, request input from Historical Commission?

R. Lunn would do interdepartmental memo.

K. Johnson said if any other information applicant and representative could think of.

D. MacGuire said he should have brought pictures of the structure.

K. Johnson said if anything else they wished to present, bring it that night and they could present it to the Bd. and have it included in the record.

R. Lunn suggested getting it to her three days ahead and she could e-mail to members of the Bd. to have in advance.

D. MacGuire would do that.

J. Plourde said DPW was mentioned, but that would be part of Planning Bd process. Consensus of Bd members was that wasn't necessary as part of the ZBA process.